

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HATEM BEHIRY,	:	
	:	
Petitioner,	:	
	:	16 Cr. 763 (LGS)
-against-	:	
	:	<u>ORDER</u>
UNITED STATES OF AMERICA,	:	
Respondent.	:	
-----X	:	

LORNA G. SCHOFIELD, District Judge:

WHEREAS, on January 27, 2023, Petitioner filed a petition pursuant to 28 U.S.C. § 2255 and a writ of error *coram nobis*.

WHEREAS, the Court concludes that the § 2255 motion should be dismissed for lack of jurisdiction. Section 2255 provides that a “prisoner *in custody* under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence.” 28 U.S.C. § 2255(a) (emphasis added).

WHEREAS, a petitioner “must satisfy the jurisdictional ‘in custody’ requirement” at the time of filing the petition. *United States v. Rutigliano*, 887 F.3d 98, 104 (2d Cir. 2018) (internal quotation marks omitted). “[O]nce the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not themselves sufficient to render an individual ‘in custody’ for the purposes of a habeas attack upon it.” *Ogunwomoju v. United States*, 512 F.3d 69, 74 (2d Cir. 2008) (internal quotation marks omitted); accord *United States v. Brito*, No. 20 Cr. 63, 2022 WL 3025833, at *2 (S.D.N.Y. Aug. 1, 2022). “[A] petitioner in immigration detention or under a final order of removal as a result of a criminal conviction is not

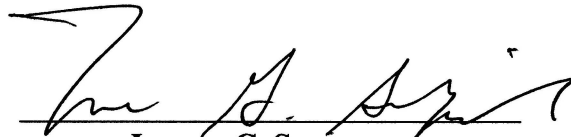
considered ‘in custody’ for the purposes of Section 2255.” *Brito*, 2022 WL 3025833, at *2.

WHEREAS, Petitioner has completed the 24-month sentence imposed by the Court. He is presently held in immigration detention at the Pike County Jail in Hawley, Pennsylvania. Because Petitioner is not “in custody” for purposes of § 2255, this Court lacks jurisdiction to entertain his § 2255 petition. It is hereby

ORDERED that Petitioner’s § 2255 petition is **DENIED** for lack of jurisdiction. It is further

ORDERED that the Government shall file a response to Petitioner’s writ of error *coram nobis* on or before **February 23, 2023**. If Petitioner chooses to reply, he shall do so by **March 10, 2023**.

Dated: February 3, 2023
New York, New York

A handwritten signature in black ink, appearing to read 'Lorna G. Schofield', is written over a horizontal line.

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE